



# California Fair Political Practices Commission

April 8, 1986

Ms. Margaret C. Wright  
29412 Water Street  
East Highlands, CA 92329

Re: Your Request for Advice  
Our No. A-86-085

Dear Ms. Wright:

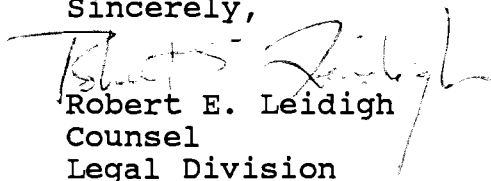
Pursuant to your request for advice, I immediately reviewed the legal memorandum from James W. Dilworth, Counsel to the Board of the San Bernardino Valley Municipal Water District, of which you are a member. You had consulted Mr. Dilworth for advice regarding possible disqualification situations facing you on the Board.

On March 17, 1986, I discussed Mr. Dilworth's memorandum with you and he over the telephone. At that time I advised you that the only objection which I had to the advice rendered therein was with respect to the guideline to be used in measuring the materiality of effects upon your interest in real property. (See the memo - copy attached - at pp. 7-8, discussing "Decisions regarding tertiary sewer treatment".) The guideline which is applicable to decisions affecting interests in real property is 2 Cal. Adm. Code Section 18702(b)(2), not 18702.1(a)(4). A copy of both regulations is enclosed for your convenience.

With this exception, I found Mr. Dilworth's memorandum to fully and adequately advise you regarding the potential disqualification situations facing you. As we discussed, in most of these situations it is a factual question as to whether disqualification is necessary. Those determinations are best made by those in possession of all of the facts. You will consult with Mr. Dilworth on these matters as they arise.

I trust that this written confirmation of our telephone conversation which you have requested that I provide, meets your needs.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

cc: James W. Dilworth

HR 11 5 02 AM '86

Margaret C. Wright  
29412 Water St.  
East Highlands, California 92329

Mr. Robert Leidigh  
Legal Division  
California Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento California 95804-0807

March 7, 1986

Re: GC-85/398, Margaret Wright

Dear Mr. Leidigh,

I am enclosing a copy of a February 27, 1986 letter reviewing my situation with respect to possible conflicts of interest on some matters which are now pending or likely to come before the Board of the San Bernardino Valley Municipal Water District. This letter was sent to me on my request, from Mr James W. Dilworth, Board Council for the San Bernardino Valley Municipal Water District.

I am forwarding this copy to you for your review and advice on the listed items and actions in which I may or may not participate. I urge your immediate attention and response before our next scheduled board meeting March 17 th, 1986.

Thank you very much for your assistance.

Yours very truly,



Margaret C. Wright

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February 27, 1986

Mrs. Margaret C. Wright  
29412 Water Street  
East Highland, California 92329

Dear Mrs. Wright:

Pursuant to your request, I have reviewed your situation with respect to possible conflicts of interest on some of the matters which are now pending or likely to come before the Board of the San Bernardino Valley Municipal Water District. As I understand the matter, the property holdings which present this risk consist of your stock holdings in the North Fork Water Company and Bear Valley Mutual Water Company and your land ownership in the East Highlands area. Both North Fork Water Company and Bear Valley Mutual Water Company are mutual water companies organized under the General Corporation Law of the State of California with stock that is not appurtenant to the land. In each case your stock ownership is of a value in excess of \$1,000. As mutual water companies, they are organized for the purpose of delivery of water to their shareowners at cost. At the present time a tract map is pending on your land in East Highlands, or a portion of it, for subdivision of the property, which will require provision of sewer service to the property by the East Valley Water District, which in turn uses the sewer treatment facilities of the City of San Bernardino.

It is my understanding that you wish to pursue a conservative course in this matter so as to avoid any question of impropriety.

A. THE FPPC REGULATION

The regulation of the Fair Political Practices Commission with respect to disqualification is section 18702.1 of the California Administrative Code, effective October 7, 1985, copy of which is attached. Subsection (a) of this regulation lists five situations in which a public official is required to disqualify himself, subsection (b) defines when a person or business entity "appears" before an official, as the term is used for purposes of subsection (a), and subsection (c) states three situations in which the disqualification requirement in subsection (a) does not apply.

1. Subdivisions (1) and (2) of subsection (a).

Looking first at subsection (a) which states the situations in which disqualification is required (subject to the exceptions in subsection (c)), subdivision (1) deals with sources of income (including gifts) to the official of \$250.00 or more in the preceding 12 months. It applies to all persons, whether business entities or not, and it only applies in situations in which the person that is a source of income "appears" before the official.

Subdivision (2) deals only with business entities in which the official has a direct or indirect investment of \$1,000 or more or in which the official is an officer, director, partner, trustee, employee, or holds any position of management. It does not apply to persons who are not business entities, and it applies only if the business entity "appears" before the official.

For the purpose of subdivisions (1) and (2) the term "appears" is defined in subsection (b) as referring to a situation in which a person or business entity either personally or by an agent initiates a proceeding by filing an application, claim, appeal, or similar request, or is a named party in such a proceeding on which a decision will be made by the official or a Board on which the official serves. (Although the regulation does not so state, it appears to me that this definition is to be read in the disjunctive, that is, if the proceeding is either initiated by the person or the person is a named party in the proceeding, the person is making an appearance).

Because of the requirement that the person or business entity "appear" before the board, I do not think that subdivisions (1) and (2) should present any problem to you. If the North Fork Water Company or Bear Valley Mutual Water Company make some kind of application to the San Bernardino Valley Municipal Water District Board or if they respond to an application by someone else, the conflict of interest would be evident to you. Since both entities are corporations, all of their appearances would necessarily be made by agents, but I assume that they would not be any the less identifiable because of that fact. (It may also be noted that subsection (b) unlike subsection (a), applies only to business entities, and you have an opinion from the FPPC that the mutual water companies are not business entities, a question as to which I express no personal opinion).

2. Subdivision (3) of subsection (a).

→ Subdivision (3) of subsection (a) relates to certain types of decisions regarding real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more. This provision would apply directly to your East Highlands property, of course.

With respect to the types of decision listed, the reference to zoning or rezoning would be inapplicable, since the District has no such authority and is not engaged in providing retail water service on which a decision might be made which could conceivably affect the zoning of the property.

The references to "annexation or deannexation" or "inclusion in or exclusion from" are similarly unlikely to be applicable, since your property is included in the District at the present time and there is no likelihood of any proceeding to change its status in that respect. Conceivably the District could be faced with some decision which might affect the inclusion or exclusion of your property from the territory of some other governmental agency, but I am not aware of anything of that nature which is likely to occur.

→ With respect to sale, purchase, or lease, or actual or permitted use, the District acquired an easement across your property some years prior to your election to the Board, but I am not aware of any prospective interest by the District in your property or involvement with respect to it at the present time other than the fact that the District will continue to make use of its pipeline easement across your property for the indefinite future. If a question were to arise in the future as to what use you or prospective purchasers of the portion of your property which is subject to the District's easement could make, obviously you would have to disqualify yourself from any decision or action by the District Board.

The reference to taxes is not here relevant since the exception in subdivision (1) of subsection (c) (effect of the decision not distinguishable from its effect on the public generally) is applicable. The only tax which the District Board is able to levy at the present time consists of the general ad valorem property tax override for pre-July 1, 1978 indebtedness and is applicable to all real property in the District, with such limited exemptions as are provided in the statutes.

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The provision as to fees is less clear. Since to the best of my knowledge the District has no fees which affect your property, the question is best deferred until it arises. (I have discussed questions regarding the district's water rates later in this letter). ←

3. Subdivision (4) of subsection (a)

Subdivision (4) covers the situation in which "it is reasonably foreseeable that the personal expenses, income, assets, or liabilities of the official or his or her immediate family will be increased or decreased by at least \$250.00 by the decision". It is this provision which will present you the greatest difficulty, since it necessarily will require you to decide whether particular decisions will in fact have such a financial effect. It is to be noted that the provision is applicable only if the effect is "reasonably foreseeable"; financial effects which are not reasonably foreseeable at the time of the decision are not in view. Note, however, that decisions which may reasonably be expected to increase the value of your stock or your land by \$250.00 (or decrease it, for that matter) would be covered. ←

4. Subdivision (5) of subsection (a)

Subdivision (5) refers to situations in which disqualification is required elsewhere in the FPPC Conflict of Interest Regulations. It is not clear to me what this may cover, since there is no reference to the other regulations in view. Decisions affecting significant campaign contributors may be an example, however. (For some reason this subdivision is omitted from the published Administrative Code materials which I have reviewed, but I assume that is the result of a typographical error. The version I enclose came from the FPPC.) ← ?

5. The exceptions in subsection (c)

Subsection (c) sets forth three general exceptions to the disqualification requirements appearing in subsection (a). Only the first of these, which I have briefly referred to above, appears to me to be of significance for present purposes. This provision excludes decisions in which the effect of the decision on the official or on the official's family or on the source of income or business entity in which the official has an investment or is an officer or other participant or on the real property will not be distinguishable from its effect on the

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public generally. I enclose copy of section 18703 of the Administrative Code, in which the FPPC has provided some definition of the phrase "effect on the public generally."

#### B. APPLICATION OF THE REGULATION

I have identified some of the areas in which the District will be making decisions in the future and have listed them for discussion below with primary reference to subdivision (4) of subsection (a). If there are others which you identify which you believe may need discussion, please let me know. These areas are as follows:

1. The District's program for construction of additional distribution facilities.

2. District studies and decisions with respect to a tertiary sewage treatment program, whether by the District or through SAWPA.

3. The District's program to alleviate the high groundwater problem in the San Bernardino area.

4. District tax levies.

5. District water rates.

6. The District budget.

1. The District distribution facilities construction program.

At the present time the District is preparing to let bids for construction of the next phase of the cooperative water project facilities. These facilities include the Greenspot Pipeline Phase III, which will connect with the District's existing Greenspot Pipeline and extend up Mill creek to the Tate Pump Station, the Tate Pump Station, which will be constructed in the vicinity of the Boullion Box, the Tate Pipeline which will connect with the City of Redlands Tate Treatment Plant and its water distribution facilities, and the Yucaipa Pipeline, which will extend from the Southern California Edison facilities further up in Mill Creek Canyon to the Wilson Spreading Grounds in the Yucaipa area. These facilities will make it possible to deliver Mill Creek Water belonging to the City of Redlands and the Crafton Water Company to the Yucaipa area for use by the

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Yucaipa Valley County Water District and to replace that water with exchange water from the Santa Ana River, which may in turn be replaced with state project water supplied by the District through its Foothill Pipeline. These facilities may also improve the Bear Valley Mutual Water Company's ability to deliver water to its stockholders, particularly the City of Redlands. The District is contractually obligated under the Cooperative Water Project Agreement (which was entered into in 1976 prior to your tenure on the Board) to construct these facilities, although the time at which the construction is to be made is subject to various contingencies in the District's discretion based upon availability of funding, need for the facilities, and so forth.

Subdivisions (1) and (2) of subsection (a) of FPPC Regulation 18702.1 would clearly be inapplicable to this situation since there have been no appearances before the District by Bear Valley Mutual Water Company or any agents of it in connection with the matter and there is no reason to anticipate any. Subdivision (3) is similarly inapplicable since it does not affect any real property in which you have any interest. Since the Bear Valley Mutual Water Company is a mutual water company which operates at cost and does not make any profit, the facilities cannot affect your income for purposes of subdivision (4), and I think it most unlikely that it would affect your personal expenses, unless you have some reason to suppose that it would affect the amount of the Bear Valley Mutual Water Company's stock assessments. Since the construction program cannot affect your personal liabilities, this leaves only the question whether it affects your assets, i.e. whether the value of your Bear Valley Mutual Water Company stock holdings would be increased or decreased by \$250.00 or more.

What effect the construction of these facilities will have on the value of the stock is extremely difficult to project, at least on the basis of what information is available to me. It is possible to argue that it will reduce the per share value of the stock by creating a demand for water by the City of Redlands on shares which the city has previously been unable to take delivery on, with the result that less water will be available per share, while it is also possible to argue that it will increase the value of the stock by encouraging the City of Redlands or others to acquire stock. I doubt that it is reasonably foreseeable what the effect on the value of the stock will be at any particular time, although it does appear to me that there is bound to be some effect, at least over the long term. The partial integration of the company's facilities with

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those of the District may serve to preserve the value of what would otherwise be a declining company which would tend to go out of business as agriculture converted to urban uses. The question is complicated further by the fact that the District is obligated to construct the facilities in question, or something of essentially the same nature, and that only the details of the construction and time of the construction are in question. The regulation, however, does not contain any explicit exception for decisions in which the District's options are restricted by contractual commitments.

I had previously advised you that you could participate in board action to construct cooperative water project facilities and I still feel that advice, at the time, was basically sound. At the present time, however, in light of the new FPPC regulation, which contains no explicit exception with respect to action which the District is contractually obligated to undertake, and in view of the fact that questions have been raised by others, you may wish to disqualify yourself on these questions. This would be a conservative course and may represent an excess of caution, but it is my understanding that that is the course you wish to pursue.

There should, of course, be no problem for you in participating in decisions on construction of water facilities elsewhere in the District where the companies in question are not affected.

## 2. Decisions regarding tertiary sewer treatment.

This area, like the previous one, involves a consideration of only subdivision (4) of subsection 18702 (a), that is, the question is whether decisions in this area will have a \$250.00 or more effect upon your real property in East Highlands, and if so, whether that effect is different from that on the public generally.

The relevant factual background is that the Regional Water Quality Control Board has indicated that the sewer treatment plants of the cities of San Bernardino and Colton must provide tertiary treatment in the near future. The board's practice in the past in areas which have not complied with such requirements has been to impose a moratorium upon land development, which has generally resulted in restrictions upon the size and extent of land divisions in the territory affected. Such action could seriously impact the proposed development of

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your real property in East Highlands and would surely have more than a \$250.00 effect upon its value.

Decisions with respect to tertiary treatment may range all the way from planning studies to construction of actual facilities, and the San Bernardino Valley Municipal Water District is not necessarily the sole agency which could take action in the field. The Santa Ana Watershed Projects Authority has offered to participate in studies and it is possible that any actual facilities would be constructed by one or more of the cities involved or by some agency created by them rather than by the district. It is also possible that the need for tertiary treatment could be obviated if continuous flow in the Santa Ana River were eliminated. Also, you will have to bear in mind that while properties with existing sewer service will not be affected by a regional board moratorium, your proposed land development project in all probability would be.

Necessarily you will have to exercise some element of judgment in deciding at what point some type of proposed board action might affect the value of your property. It is my belief that planning studies to be performed either by the District or SAWPA would not fall in that category. Any decision, however, which might reasonably be anticipated to result in action by the regional board to impose a moratorium or to avert such a moratorium would be action on which I believe you would be required to disqualify yourself. This would include any decision to construct, or not to construct, tertiary treatment facilities, agreements with others which would result in such construction by others, action which would eliminate the requirement of such construction, or the like.

I should also note that in light of section 18703 I do not believe that section 18702.1(c) would eliminate any disqualification requirement. Persons with substantial acreage seeking development of their property simply would not qualify as a significant segment of the public for purposes of determining whether the effect of a decision would be distinguishable from its effect on the public generally.

### 3. The High Groundwater Problem.

For some time now the District Board has been considering various actions to ameliorate the high groundwater problem in the lower end of the Bunker Hill Basin. The question has been raised whether you are required to disqualify yourself

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from participating in actions with respect to this problem. Again the question would revolve around subdivision (4) and specifically as to whether such actions would affect either the value of your water stock or the value of your real property in East Highlands.

With respect to the water stock, it is my understanding that the North Fork Water Company's deliveries are solely of gravity water and therefore that it would not be affected by any action taken with regard to the high groundwater problem. Bear Valley Mutual Water Company similarly is essentially a gravity water company, although at various times in the past it has operated wells. It is my understanding that at the present time the Bear Valley Wells are essentially inoperable, so that water levels in the vicinity of the wells would have no effect on the assessments made by the company and therefore on your income or expenses. If the company undertook to refurbish its wells, this situation would have to be reevaluated. Similarly, it seems unlikely to me that any of the proposals for dealing with the high groundwater problem will affect the value of your stock in any significant way, although this may depend partially on the nature of the control measure proposed. Pumping water out of the high groundwater area, for instance, would be less apt to have an effect on well levels in the upper end of the basin where the Bear Valley wells are located than would a restriction upon replenishment in the forebay area.

With respect to effects on the value of your real property in East Highlands, I believe that the problem is more acute. The East Valley Water District has filed suit against the San Bernardino Valley Municipal Water District with respect to measures proposed by the District for control of the high groundwater problem, and your proposed property development will be dependent upon water service and sewer service through East Valley Water District. The ability of the East Valley Water District to affect the value of your property under these circumstances is so extensive that it appears to me that you should disqualify yourself with respect to any matter presently in litigation between the two districts or which you may reasonably foresee may subsequently become a matter of litigation or dispute between them. This would apply to the matters presently in litigation and to any proposed action regarding the high groundwater problem (or for that matter, any other subject) which may reasonably be foreseen to be the subject of disagreement between the two districts.

#### 4. Taxes.

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As indicated above the only taxes which the District is authorized to levy are ad valorem taxes which affect all the taxable real property within the District. The exemption in subsection (c) will necessarily cover this situation and you will not be required to disqualify yourself. In the absence of such exemption, it may be noted, it would be impossible for the board to act.

5. District water rates.

The only fees of any consequence which I am aware the District charges consist of its rates for water service. These rates vary as to particular classes of service and in the case of the Cooperative Water Project are fixed by contractual agreement until September of 1986, after which the District will be free to make such charge as it deems appropriate as in other cases. The district does not directly serve your real property, so that subdivision (3) of subsection (a) would not be applicable unless the North Fork Water Company made substantial purchases of supplemental water from the district.

In general it is my conclusion that the exclusion in subsection (c) where the effect of the decision on you or your business interests is not distinguishable from its effect on the public generally would again be applicable, except in the case of any rates set for deliveries to the members of the Cooperative Water Project Agreement which would affect the Bear Valley Mutual Water Company and the North Fork Water Company. I would recommend that you disqualify yourself with respect to the establishment of any rate for delivery to those companies which is different from the rates charged to other water users. If rate policy became the subject of conflict with East Valley Water District, it probably would be advisable to disqualify yourself with respect to the issues between the two districts.

6. The District Budget.

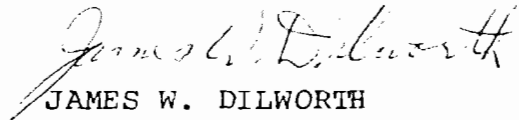
To the extent that the District budget commits funds for construction of facilities or for an operational or other program of the District which would itself have a reasonably foreseeable financial effect upon your property of \$250.00 or more, it would appear to me that the action on the budget would have the same effect and accordingly you should disqualify yourself upon such questions. You would, of course, be free to participate in decisions with respect to the balance of the budget.

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I hope the above analysis will help to clarify, to some extent, at least, the issues presently confronting you. If additional questions arise, I will be glad to try to assist you.

Very truly yours,

  
JAMES W. DILWORTH

JWD:aec



# California Fair Political Practices Commission

March 12, 1986

Margaret C. Wright  
29412 Water Street  
East Highlands, CA 92329

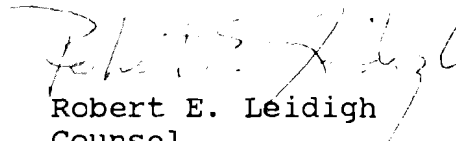
Re: A-86-085

Dear Ms. Wright:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh